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SUPREME COURT OF THE UNITED STATES

IN RE JAMES BLODGETT, SUPERINTENDENT,
WASHINGTON STATE PENITENTIARY, ET AL.

ON PETITION FOR WRIT OF MANDAMUS

No. 91-716. Decided January 13, 1992

PER CURIAM.

The Court has before it a petition from the State of Washington for a writ of mandamus to the Court of Appeals for the Ninth Circuit. The petition seeks an order directing the Court of Appeals to issue its decision on an appeal from the District Court's denial of a second federal habeas petition in a capital case. The appeal was argued and submitted to the Court of Appeals on June 27, 1989, and no decision has been forthcoming.

Charles Rodman Campbell was convicted of multiple murders in 1982 in the State of Washington and sentenced to death. After his conviction was affirmed on direct appeal and we denied certiorari, *Campbell v. Washington*, 471 U.S. 1094 (1985), his first federal habeas petition was filed in July 1985 in the United States District Court for the Western District of Washington. Proceedings in that matter were completed when we denied certiorari in November 1988. *Campbell v. Kincheloe*, 488 U.S. 948. No relief was granted.

In March 1989 Campbell filed a second federal habeas petition in the same District Court. The court acted with commendable dispatch, holding a hearing and issuing a written opinion denying a stay or other relief within days after the second petition was filed. On March 28, 1989, Campbell appealed to the Ninth Circuit. The Court of Appeals granted an indefinite stay of execution and set a briefing schedule. The case was argued and submitted in

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June 1989, but no decision was announced and the stay of execution remains in effect. The Washington Attorney General sent letters to the panel in April and October of 1990 inquiring about the status of the case, but neither letter was answered.

In January 1990 Campbell filed a motion to withdraw certain issues from consideration by the Ninth Circuit panel, and he renewed this motion in April. The panel took no action. In July 1990 Campbell filed his third state action for collateral relief, a personal restraint petition, with the Washington Supreme Court. In September, Campbell again moved the Court of Appeals to withdraw three issues from consideration in the case that it was still holding under submission, leaving eight others to be decided. The panel did not respond until by order of February 21, 1991, it noted Campbell's motion to withdraw the issues, requested a report on the status of the state court proceedings, and vacated its own submission of the case. Both Washington and Campbell responded that all of the issues pending before the Ninth Circuit had been exhausted. The State requested that the case be resubmitted, but the panel did not do so.

The Washington Supreme Court denied Campbell's third personal restraint petition on its merits on March 21, 1991. On June 10, 1991, Campbell filed a document advising the Court of Appeals panel that he desired to discharge his attorneys and proceed *pro se* and that he would file a third federal habeas petition in the District Court. At that point more than two years had passed since the Ninth Circuit had heard oral argument in the case. Almost two months later, on August 7, 1991, the panel granted the motion to relieve counsel, directed Campbell to file his third federal habeas petition by August 30, and announced its intention to wait for the District Court's ruling before taking further action. The District Court has set a briefing schedule for the third petition.

On October 25, 1991, the Washington Attorney General filed the mandamus petition now before us and on November 22 the Court of Appeals and the members of the panel

filed a response. Neither the response nor the record reveals any plausible explanation or reason for the panel's delay in resolving the case from June 1989 until July 1990. The response addresses the events after Campbell's third personal restraint petition was filed in the Washington Supreme Court. The response indicates that the panel vacated submission in February 1991 because if the Washington Supreme Court had granted the state petition, the appeal before the Ninth Circuit would have become moot. It further stated that the panel desired to avoid piecemeal appeals by awaiting the decision of the District Court on the third federal habeas petition. The response noted that the Ninth Circuit has formed a Death Penalty Task Force with the objective of eliminating successive habeas petitions and that the consolidation of the last two petitions is consistent with that objective.

The delay of over a year before the third personal restraint was filed in Washington state court remains unexplained, and was in fact compounded by the events that followed. The orders by the Ninth Circuit to vacate submission of the case until completion of the state collateral proceeding and then to hold the case in abeyance pending filing and resolution of the third federal habeas proceeding in the District Court raise the very concerns regarding delay that were part of the rationale for this Court's decisions in *Rose v. Lundy*, 455 U.S. 509 (1982) and *McCleskey v. Zant*, 499 U.S. ____ (1991). Adherence to those decisions, and their prompt enforcement by the district courts and courts of appeals, will obviate in many cases what the Court of Appeals here seems to perceive to be the necessity for accommodating multiple filings.

As to the Death Penalty Task Force, reports of joint committees of the bench and bar should be of urgent concern to all persons with the responsibility for the administration of justice in the Ninth Circuit, but the ordinary course of legal proceedings and the constant duty of all judges to discharge their duties with diligence and precision cannot be suspended to await its recommendations.

None of the reasons offered in the response dispels our concern that the State of Washington has sustained severe prejudice by the two-and-a-half year stay of execution. The stay has prevented Washington from exercising its sovereign power to enforce the criminal law, an interest we found of great weight in *McCleskey* when discussing the importance of finality in the context of federal habeas corpus proceedings. *Id.*, at ___ (slip op., at 22-23). Given the potential for prejudice to the State of Washington, the Ninth Circuit was under a duty to consider Cambell's claim for relief without delay. Our case law suggests that expedited review of this second habeas petition would have been proper. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983) ("Even where it cannot be concluded that a [successive habeas] petition should be dismissed under Rule 9(b), it would be proper for the district court to expedite consideration of the petition"). The delay in this case demonstrates the necessity for the rule that we now make explicit. In a capital case the grant of a stay of execution directed to a State by a federal court imposes on that court the concomitant duty to take all steps necessary to ensure a prompt resolution of the matter, consistent with its duty to give full and fair consideration to all of the issues presented in the case.

Despite our continuing concerns, we decline to issue mandamus to the Court of Appeals at this time. While there are grounds to question both the necessity and the propriety of the Ninth Circuit's order of August 7, 1991, *Campbell v. Blodgett*, 940 F.2d 549, the State did not file any objection to it. The State should have lodged its objection with the Court of Appeals, citing the cases it now cites to us. True, the State had taken some action. It wrote twice in 1990 to inquire about the status of the case. And after the panel's order vacating submission, the State objected and asked that the case be resubmitted for decision. The argument could be made that further requests for an expedited decision on the merits had little chance of success. But as a predicate for extraordinary relief, the State should have asked the Court of Appeals to

vacate or modify its order of August 7, 1991, before coming here. This Court's Rule 20.1 ("To justify the granting of any writ under that provision, it must be shown . . . that adequate relief cannot be obtained in any other form or from any other court").

As we do not now issue a writ of mandamus, the Court of Appeals should determine how best to expedite the appeal, given the present posture of the case. Denial of the writ is without prejudice to the right of the State to again seek mandamus relief or to request any other extraordinary relief by motion or petition if unnecessary delays or unwarranted stays occur in the panel's disposition of the matter. In view of the delay that has already occurred any further postponements or extensions of time will be subject to a most rigorous scrutiny in this Court if the State of Washington files a further and meritorious petition for relief.

The motion of respondent Charles R. Campbell for leave to proceed *in forma pauperis* is granted. The petition for writ of mandamus is

Denied.